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10/804,486

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Danny R. Gaydou

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ROPES & GRAY LLP

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EXAMINER

STRONCZER, RYAN S

ART UNIT

PAPER NUMBER

4157

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/804,486

**Applicant(s)**

GAYDOU ET AL.

**Examiner**

RYAN STRONCZER

**Art Unit**

4157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 March 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-68 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-68 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 18 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-85/86)  
Paper No(s)/Mail Date 7-31-06 2-27-06 1-13-06  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

***Claim Objections***

Applicant is advised that should claim 1 be found allowable, claims 18, 35, and 52 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Applicant is advised that should claim 8 be found allowable, claims 25, 42, and 59 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Applicant is advised that should claim 15 be found allowable, claims 32, 49, and 66 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Applicant is advised that should claim 2 be found allowable, claims 9, 16, 19, 26, 33, 36, 43, 50, 53, 60, and 67 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else

are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Applicant is advised that should claim 3 be found allowable, claims 10, 17, 20, 27, 34, 37, 44, 51, 54, 61, and 68 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Applicant is advised that should claim 4 be found allowable, claims 11, 21, 28, 38, 45, 55, and 62 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Applicant is advised that should claim 5 be found allowable, claims 12, 22, 29, 39, 46, 56, and 63 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Applicant is advised that should claim 6 be found allowable, claims 13, 23, 30, 40, 47, 57, and 64 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Applicant is advised that should claim 7 be found allowable, claims 14, 24, 31, 41, 48, 58, and 65 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 52-68 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Claims 52-68 recite “machine-readable media for providing information about a currently broadcasting program...wherein the machine-readable media is encoded with machine-readable instructions...” The information about a currently broadcasting program is embodied in the broadcast signal, which is an electromagnetic signal. This

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subject matter is not limited to that which falls within a statutory category of invention as defined above because an electromagnetic signal is not a process, machine, manufacture, or composition of matter; it is a form of energy. For the purposes of applying prior art in this office action, the "machine-readable instructions" encoded within the recited media of claim 52 are considered substantially similar to claims 1, 18, and 35; the instructions of claim 59 are considered substantially similar to claims 8, 25, and 42; the instructions of claim 66 are considered substantially similar to claims 15 and 49.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-68 are rejected under 35 U.S.C. 102(e) as being anticipated by**

**Vallone et al. (US Patent No.: 6,847,778).**

As to claim 1, Fig. 20a-c of Vallone teach the steps of "...displaying the currently broadcasting program; determining a start time and an end time associated with the currently broadcasting program" as recited in claim 1. Vallone teaches:

The user can rotate through three different levels of banners, each successively containing more information about the program. The lowest level banner **2001** contains minimal

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information such as channel **2002**, station ID **2003**, and time **2004**. The second level banner **2005** displays, in addition to the information in the minimal banner **2001**, information such as program title **2006**, duration **2007**, program MPAA or TV rating **2008**, and thumbs rating. The final level banner **2009** adds program text description **2010** to the second level banner **2005**. (Col. 16, Lines 56-65)

Fig. 26-27 teach the steps of "...displaying a transport control interface, wherein the transport control interface indicates: time length of the currently broadcasting program based on the start time and on the end time, and at least one time segment of the time length of the currently broadcasting program that has been recorded." Vallone teaches:

The green cache bar **2602** inside of the trick play bar **2601** indicates how much of the circular cache is filled. Time marks **2603**, **2604** are displayed inside the trick play bar **2601** giving the user a visual reference point from which to judge the current time and how far back in time the cache has recorded. The time marks **2603**, **2604** can be any increment of time needed, but usually are in half hour or 15 minute increments. Every half hour (or selected increment), the cache bar **2602** slides to the left. The current time is always between the time indicated at right hand side **2610** of the trick play bar **2601** minus the time increment of the middle time mark **2604**, when watching live television. The entire length of the trick play bar **2601** is calculated by subtracting the time indicated on the left hand side **2609** of the trick play bar **2601** from the time indicated on the right hand side **2610** of the trick play bar **2601**. (Col. 18, Lines 39-54)

The trick play bar taught by Vallone is functionally equivalent to the claimed transport control interface in that it indicates the start and end times of the current program, as well as indicates how much of the present broadcast has been recorded.

Claim 2 is rejected by Fig. 26-27 of Vallone et al. as applied to claim 1.

Claim 3 is rejected by Fig. 26-27 of Vallone as applied to claim 1.

Claim 4 is rejected by Fig. 26-27 of Vallone as applied to claim 1.

As to claim 5, Fig. 26 and 27 of Vallone as applied to claim 1 teach a trick play bar **2601** in which the green cache bar **2602** indicates "how much of the circular cache

is filled." The black portion of the trick play bar indicates the unfilled portion of the circular cache.

Claim 6 is rejected by Fig. 26-27 of Vallone as applied to claim 1.

As to claim 7, the trick play functionality taught by Vallone is available to the user regardless of whether the user is watching a pre-recorded program or a currently broadcasting program. It is an inherent feature of the Vallone system that the user can operate the trick play functions while watching live television.

The method of Claim 8 is substantially similar to claim 1 and is rejected by Vallone et al. as applied above. As to the limitation regarding, "providing information about at least two broadcasting programs," the system taught by Vallone, as illustrated in Figs. 3-6, displays the program information based on data encoded with the program broadcast, and thus inherently displays program information for a subsequent broadcast program, as claimed:

With respect to FIGS. 5 and 6, the program logic reads accumulated events in the event buffer **602** when it is interrupted by the Media Switch **601**. From these events the program logic generates a sequence of logical segments **603** which correspond to the parsed MPEG segments **615**...Each logical segment points **604** directly to the circular buffer, e.g., the video buffer **613**, filled by the Media Switch **601**. This new buffer is then passed to other logic components, which may further process the stream in the buffer in some way, such as presenting it for decoding or writing it to the storage media. (Col 6, Lines 4-32)

The system displays program information for the program currently being displayed based on data encoded within the broadcast signal and thus inherently will display program information for a given program regardless of whether it is subsequent to a program previously viewed by the user.

Claim 9 is rejected by Vallone et al. as applied to claims 2, 16, and 19.

Claim 10 is rejected by Vallone et al. as applied to claims 3, 17, and 20.



Claim 11 is rejected by Vallone et al. as applied to claim 4.

Claim 12 is rejected by Vallone et al. as applied to claim 5.

Claim 13 is rejected by Vallone et al. as applied to claim 6.

Claim 14 is rejected by Vallone et al. as applied to claim 7.

As to claim 15, Vallone et al., as applied to claim 1, teaches a trick play bar which is the functional equivalent of the recited "transport control interface." As to recited, "displaying a television program," Fig. 1 teaches an output module connected to a television.

Claim 16 is rejected by Vallone et al. as applied to claim 2.

Claim 17 is rejected by Vallone et al. as applied to claim 3.

Claim 18 is substantially similar to claim 1 and is rejected by Vallone et al. as applied to claim 1.

Claim 19 is rejected by Vallone et al. as applied to claims 2, 9, and 16.

Claim 20 is rejected by Vallone et al. as applied to claim 3, 10, and 17.

Claim 21 is rejected by Vallone et al. as applied to claim 4 and 11.

Claim 22 is rejected by Vallone et al. as applied to claim 5 and 12.

Claim 23 is rejected by Vallone et al. as applied to claim 6 and 13.

Claim 24 is rejected by Vallone et al. as applied to claim 7 and 14.

Claim 25 is substantially similar to claim 8 and is rejected by Vallone et al. as applied to claim 8.

Claim 26 is rejected by Vallone et al. as applied to claims 2, 9, 16, and 19.

Claim 27 is rejected by Vallone et al. as applied to claim 3, 10, 17, and 20.

Claim 28 is rejected by Vallone et al. as applied to claim 4, 11, and 21.

Claim 29 is rejected by Vallone et al. as applied to claim 5, 12, and 22.

Claim 30 is rejected by Vallone et al. as applied to claim 6, 13, and 33.

Claim 31 is rejected by Vallone et al. as applied to claim 7, 14, and 24.

Claim 32 is substantially similar to claim 15, as is rejected by Vallone as applied to claim 15. Re the recited, "means for displaying a television program," Fig. 1 teaches an output module connected to a television.

Claim 33 is rejected by Vallone et al. as applied to claims 2, 9, 16, 19, and 26.

Claim 34 is rejected by Vallone et al. as applied to claims 3, 10, 17, 20, and 27.

As to Claim 35, the functionality provided by the recited control circuitry is substantially similar to claims 1 and 18 and is rejected by Vallone et al. as applied above. Re the recited, "user input interface; display; and control circuitry," Fig. 14 of Vallone teaches a remote control with which the user can control the system, Figs. 16-19, 24-25, and 28-33 teach various menus with which the user can interact to perform functions associated with the system; Fig. 1 teaches an output module connected to a television; control circuitry is inherent in a system comprising components such as a hard disk, memory, and CPU as taught in Figs. 1, 7-9, 11, 13, and 15.

Claim 36 is rejected by Vallone as applied to claims 2, 9, 16, 19, 26, and 33.

Claim 37 is rejected by Vallone as applied to claims 3, 10, 17, 20, 27, and 34.

Claim 38 is rejected by Vallone as applied to claims 4, 11, 21, and 28.

Claim 39 is rejected by Vallone as applied to claims 5, 12, 22, and 29.

Claim 40 is rejected by Vallone as applied to claims 6, 13, 23, and 30.

Claim 41 is rejected by Vallone as applied to claims 7, 14, 24, and 31.

Claim 42 is substantially similar to claims 8 and 25 and is rejected by Vallone as applied above. Re the recited, "user input interface; display; and control circuitry," Fig. 14 of Vallone teaches a remote control with which the user can control the system, Figs. 16-19, 24-25, and 28-33 teach various menus with which the user can interact to perform functions associated with the system; Fig. 1 teaches an output module connected to a television; control circuitry is inherent in a system comprising components such as a hard disk, memory, and CPU as taught in Figs. 1, 7-9, 11, 13, and 15.

Claim 43 is rejected by Vallone as applied to claims 2, 9, 16, 19, 26, 33, and 36.

Claim 44 is rejected by Vallone as applied to claims 3, 10, 17, 20, 27, 34, and 37.

Claim 45 is rejected by Vallone et al. as applied to claims 4, 11, 21, 28, and 38.

Claim 46 is rejected by Vallone et al. as applied to claims 5, 12, 22, 29, and 39.

Claim 47 is rejected by Vallone et al. as applied to claims 6, 13, 23, 30, and 40.

Claim 48 is rejected by Vallone et al. as applied to claims 7, 14, 24, 31, and 41.

Claim 49 is substantially similar to claim 15 and 32 and is rejected by Vallone et al. as applied above.

Claim 50 is rejected by Vallone et al. as applied to claims 2, 9, 16, 19, 26, 33, 36, and 43.

Claim 51 is rejected by Vallone et al. as applied to claims 3, 10, 17, 20, 27, 34, 37, and 44.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Stronczer whose telephone number is (571) 270-3756. The examiner can normally be reached on 7:30 AM - 5:00 PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vu Le can be reached on (571) 272-7332. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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